



## **ETHICS REVIEW COMMISSION**

## **MEETING MINUTES**

**Wednesday, November 18, 2020**

The Ethics Review Commission (“Commission”) convened in a regular meeting on Wednesday, November 18, 2020, Austin, Texas via Videoconference.

Chair Luis Soberon called the meeting to order at 6:11 p.m.

Commissioners in attendance: Chair Luis Soberon, Vice-Chair J. Michael Ohueri, Secretary Kenneth “Tray” Gober, and Commissioners Debra Danburg, Betsy Greenberg, Mary Kahle, Raafia Lari, Robin Lerner, Donna Beth McCormick, and Pedro A. Villalobos. Commissioner Nathan Ryan was absent.

City Staff in Attendance: Lynn Carter, Commission Executive Liaison & Assistant City Attorney, Caroline Webster, Assistant City Attorney, Sue Palmer, Staff Liaison, Law Department; and Brian Molloy, Chief of Investigations, Office of the City Auditor.

### **CITIZEN COMMUNICATION**

Each person who signed up to speak prior to the meeting being called to order and who designated this item on which to speak, or who did not designate an agenda item on which to speak will be allowed three minutes to speak.

**Donna Davidson and Matt Mackowiak signed up to speak on agenda item 3A and elected to speak when the agenda item was called.**

### **1. EXECUTIVE SESSION**

The Ethics Review Commission may announce it will go into Executive Session pursuant to Chapter 551 of the Texas Government Code to receive advice from legal counsel on any matters specifically listed on this agenda (Private Consultation with Attorney-Section 551.071).

The Commission may go into executive session to discuss legal issues related to:

A complaint filed by Brian Molloy, Office of the City Auditor, against Delia Garza, which complaint alleges violations of City Code of Chapter 2-7 (Ethics and Financial Disclosure) Section 2-7-62 (Standards of Conduct), subsection (I) and subsection (J).

A complaint filed by Mark Littlefield against A. Jo Baylor, Our Mobility Our Future PAC, which complaint alleges violations of City Code Chapter 2-2 (Campaign Finance) Section 2-2-32 (Reporting of Direct Campaign Expenditures) and Section 2-2-33 (Disclosure Statement Required).

A complaint Littlefield filed by Mark Littlefield against Peck Young, Voices of Austin, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-33 (Disclosure Statement Required).

Jurisdictional Determination on a complaint by Mark Littlefield against Logan Cheney, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-3 (Conformity with Texas Election Code).

**The Commission went into executive session at 6:19 p.m. and the open meeting resumed at 7:28 p.m.**

### **3. JURISDICTIONAL DETERMINATION**

- a. Jurisdictional Determination on Complaint by Mark Littlefield against Logan Cheney, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-3 (Conformity with Texas Election Code).

**Chair Soberon took Agenda item number 3 out of order. Registered public speakers, Donna Davidson and Matt Mackowiak, chose not to speak. Chair Soberon explained his reasoning for his finding that the Commission did not have jurisdiction over the complaint. The Commission took no action in regard to the Chair's jurisdictional determination.**

### **2. PRELIMINARY HEARING**

Discussion and possible action regarding the following:

- a. A complaint filed by Brian Molloy, Office of the City Auditor, against Delia Garza, which complaint alleges violations of City Code of Chapter 2-7 (Ethics and Financial Disclosure) Section 2-7-62 (Standards of Conduct), subsection (I) and subsection (J).

**Commissioners Ryan and Villalobos recused themselves from discussion or action on this item.**

**Outside counsel, Steve Sheets, appeared as counsel for the Commission in regard to this complaint and Assistant City Attorney, Caroline Webster assisted with procedural questions. Complainant Brian Molloy, Chief of Investigation for the City Auditor's Office, outside counsel, Ross Fischer, and outside auditor, Travis Casner, appeared for the complainant. Attorney Jim Cousar and Respondent Delia Garza appeared for the respondent.**

**At the conclusion of the preliminary hearing, Commissioner McCormick made a motion to proceed to a final hearing, which was seconded by Commissioner Greenberg.**

**Vice-Chair Ohueri made a motion to amend Commissioner McCormick's motion to find that reasonable grounds exist to find a violation of City Code Section 2-7-62, subsection (I) and to proceed to a final hearing, which was seconded by Chair Soberon. The motion to amend passed on a vote of 8-1. Voting in favor of the motion to amend: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Kahle, Lari, Lerner, and McCormick. Voting against the motion to amend: Commissioner Greenberg. (Commissioners Ryan and Villalobos recused.)**

**The Commissioners then voted on the motion as amended: to find that reasonable grounds exist to find a violation of City Code Section 2-7-62, subsection (I) and to proceed to a final hearing. The motion failed on a vote of 3-6. Voting in favor: Commissioners Greenberg, Kahle, and McCormick. Voting against: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Lari, and Lerner. (Commissioners Ryan and Villalobos recused.)**

**Commissioner Greenberg then made a motion to find that reasonable grounds exist to find a violation of City Code Section 2-7-62, subsection (J) and to proceed to a final hearing, which was seconded by Commissioner McCormick. The motion failed on a vote of 5-4. Voting in favor: Chair Soberon and Commissioners Greenberg, Kahle, Lari, and McCormick. Voting against: Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg and Lerner. (Commissioners Ryan and Villalobos recused.)**

**Commissioner Villalobos rejoined the meeting at the conclusion of the hearing.**

- b. A complaint filed by Mark Littlefield against A. Jo Baylor, Our Mobility Our Future PAC, which complaint alleges violations of City Code Chapter 2-2 (Campaign Finance) Section 2-2-32 (Reporting of Direct Campaign Expenditures) and Section 2-2-33 (Disclosure Statement Required).

**Complainant Mark Littlefield appeared; Roger Borgelt appeared on behalf of Respondent A. Jo Baylor, Our Mobility Our Future PAC. At the conclusion of the preliminary hearing, Chair Soberon made a motion to find that there are reasonable grounds to believe a violation within the jurisdiction of the Commission had occurred based on admissions of the Respondent A. Jo Baylor, Our Mobility Our Future PAC, which was seconded by Vice-Chair Ohueri. The motion passed on a unanimous vote of the ten members present. Voting in favor: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, Lerner, McCormick and Villalobos. Commissioner Ryan was absent.**

**Secretary Gober made a motion to issue a sanction of a letter of reprimand to Respondent A. Jo Baylor, Our Mobility Our Future PAC based on disregard of the rules, which was seconded by Chair Soberon. The motion passed on a unanimous vote of all members in attendance. Voting in favor: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, Lerner, McCormick, and Villalobos. Commissioner Ryan was absent.**

**At 9:51 p.m., Commissioner Danburg made a motion to extend the meeting past 10:00 p.m., which was seconded by Commissioner Kahle. The motion passed on a vote of 9-1. Voting in favor: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, Lerner and McCormick. Commissioner Villalobos voted against the motion. Commissioner Ryan was absent.**

- c. A complaint Littlefield filed by Mark Littlefield against Peck Young, Voices of Austin, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-33 (Disclosure Statement Required).

**Complainant Mark Littlefield appeared; Roger Borgelt appeared on behalf of Respondent Peck Young, Voices of Austin. Roger Borgelt stated that he did not receive a copy of both complaints against Peck Young and requested a postponement of the hearing.**

**Commissioner Danburg made a motion to postpone the entire preliminary hearing, which was seconded by Secretary Gober. The motion passed on a vote of 9-1. Voting in favor: Chair Soberon, Vice-Chair Ohueri, and Commissioners Danburg, Greenberg, Kahle, Lari, Lerner, and McCormick and Villalobos. Commissioner Greenberg voted against the motion. Commissioner Ryan was absent.**

#### **4. NEW BUSINESS**

Discussion and possible action regarding the following:

- a. Update on Nov. 30<sup>th</sup> council candidate forum for run-off elections in Council Districts 6 and 10.

**Commission Executive Liaison Lynn Carter updated the Commission on the status of the 2020 City Council run-off election candidate forums.**

#### **5. OLD BUSINESS**

- a. Discussion and possible action regarding the following:

- i. Working group status reports and/or recommendations on the following.

Working group one (Vice-Chair Ohueri and Commissioners Greenberg and Lerner) on the following subjects:

- Commission sanctions including effectiveness, past cases, and recommendations.
- Potential amendments to City Code, Chapter 2-7 (Ethics and Financial Disclosure).

**No action was taken on this item.**

- ii. Working group two (Chair Soberon and Secretary Gober) on the following subjects:

- Commission procedures including effectiveness, past cases, and recommendations.
- Scope of work of the Commission (powers, duties, and obligations), including effectiveness, past cases, and recommendations.
- Potential amendments to the Rules of the Ethics Review Commission.
- Best practices for city attorney opinions including effectiveness, past cases, and recommendations.

**No action was taken on this item.**

- iii. Equity Working Group (Commissioners Kahle, Lari, and Ryan) status report and/or recommendations on addressing issues of race, identity, and equity including:

- (i) planning for presentations or trainings by the Equity Office;
- (ii) helping focus the Commission's evaluation of racial injustice and how the Commission can operate more fairly and effectively in light of racial injustice.

**No action was taken on this item.**

**6. APPROVAL OF MINUTES: OCTOBER 14, 2020 REGULAR COMMISSION MEETING.**

Discussion and possible action regarding the minutes for the October 14, 2020 regular commission meeting.

**Chair Soberon announced that the October minutes were not ready; no action was taken on this item.**

**7. FUTURE AGENDA ITEMS**

**Future agenda items were discussed; no action was taken.**

**ADJOURNMENT**

**The meeting was adjourned at 10:23 p.m.**